

## REMARKS

This Response and Amendment is in response to the December 27, 2006 Office Action ("Office Action"). Claims 2-41 are pending.

Claim 2 has been canceled. New claims 42 and 43 have been added. Support for new claims 42 and 43 is found throughout the specification. For example, support for new claim 42 is found at least at page 4, second full paragraph and page 5, fourth full paragraph-page 6, third paragraph.

Support for new claim 43 is found at least at page 18, second full paragraph; page 19, first full paragraph; page 25, first full paragraph; Tables 4 and 5; original claims 2-21, and original claim 30. Composition claims, including original claims 2-21, have already been searched. In addition, original claim 30 is directed to a method of using the composition of original claim 2, and original claim 2 is broader than new claim 30. Thus, any previous search of original claim 30 necessarily included the subject matter of new claim 43, so new claim 43 is not believed to create an additional burden or require a new search.

Applicants respectfully request that the new claims be entered.

In addition, claim 21 has been amended to particularly point out and distinctly claim the subject matter that the applicants regard as their invention. Support for the amendment can be found at least at page 9, third full paragraph.

Finally, claims 38 and 39 have been amended. Support for the amendments can be found at least at page 18, second full paragraph; page 19, first full paragraph; page 25, first full paragraph; Tables 4 and 5; and original claims 2-21.

## CLAIM REJECTIONS

In the present Office Action, claim 21 stands rejected under 35 U.S.C. § 112, second paragraph for indefiniteness. Claims 3-41 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 6,190,675 to Beerse, et al. ("Beerse"). Claims 2-41 also stand rejected under 35 U.S.C. § 103(a) as obvious over Beerse. In addition, claim 2 stands rejected under 35 U.S.C. § 103(a) as obvious over U.S. Pat. No. 5,798,329 to Taylor, et al. ("Taylor"). Claims 2-41 also stand provisionally rejected for non-statutory double patenting over co-pending applications, 10/177,445 and 11/113,505.

**1. The Rejection of Claim 21 Under 35 U.S.C. § 112, Second Paragraph - Indefiniteness**

Claim 21 stands rejected under 35 U.S.C. § 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. Claim 21 now recites, "The composition of claim 38, further comprising an alkyl ethoxylated emulsifier." As amended, applicants submit that claim 21 is definite and clear to one of ordinary skill in the art. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection under 35 U.S.C. § 112 as being indefinite and allow claim 21.

**2. The Rejection of Claims 3-41 Under 35 U.S.C. § 102(b) as anticipated by Beerse.**

Claims 3-41 stand rejected under 35 U.S.C. § 102(b). However as amended, Claims 3-41 are not anticipated by Beerse.

"A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference." *In re Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671 (Fed. Cir. 1994)

In this case, amended claims 38 and 39 and dependent claims 3-38 and 40-41 require that the composition is effective for inactivating viruses. Beerse merely describes compositions with antibacterial effects. Beerse does not disclose or suggest that the compositions of Beerse are effective against viruses. Compositions with antibacterial effects do not necessarily equate to compositions that have effectiveness for inactivating viruses. Accordingly, since Beerse does not teach or suggest each and every limitation of claims 3-41, Applicants respectfully request that this rejection be withdrawn.

**3. The Rejection of Claims 3-41 Under 35 U.S.C. § 103(a) as obvious over Beerse.**

Claims 3-41 stand rejected under 35 U.S.C. § 103(a). However, as amended, claims 3-41 are not obvious over Beerse. When the prior art fails to teach each and every element of a claimed invention, the invention is non-obvious. See MPEP § 2143.03. As discussed above, Beerse does not recite each and every element of the claimed invention. In addition, no cited reference teaches or suggests the claimed compositions having effectiveness against viruses as required for a conclusion of obviousness. Therefore,

independent claims 38 and 39 are non-obvious. Claims depending from non-obvious claims are also non-obvious. *Id.* Accordingly, Applicants respectfully request that the Examiner withdraw the rejection under 35 U.S.C. § 103(a) and allow claims 3-41.

**4. The Rejection of Claim 2 Under 35 U.S.C. § 103(a) as Obvious Over Taylor**

Claim 2 stands rejected under 35 U.S.C. § 103(a) as obvious over Taylor. Solely in an effort to expedite prosecution and not in acquiescence to the rejection, claim 2 has been canceled, thereby obviating this rejection. Accordingly, Applicants respectfully request that this rejection to claim 2 be withdrawn.

**5. The Provisional Rejection for Double Patenting over U.S. Applications 10/177,445 and 11/113,505.**

Claim 3-41 stand provisionally rejected for non-statutory double patenting over U.S. Applications 10/177,445 and 10/263,211. Applicants herewith submit a terminal disclaimer with respect to each of these applications. Accordingly, Applicants respectfully request that this rejection to claims 3-41 be withdrawn.

**CONCLUSION**

Applicants believe that Claims 3-43 are patentable. In view of the foregoing, Applicants respectfully request reconsideration of this application, entry of the amendments presented herein, and allowance of claims 3-43.

Respectfully submitted,



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